

COMPETITION ACT, 2002

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Topics Covered

- Objects (Preamble)
- Anti-competitive agreements (Section 3)
- Abuse of Dominant Position (Section 4)
- Regulation of Combination (Section 5 & 6)
- Competition Commission of India (Section 7-11)
- Competition Advocacy (Section 49)

Objects [Preamble]

- To prevent practices having adverse effect on competition
- To promote and sustain competition
- To protect the interest of consumers
- To ensure freedom of trade carried on by other participants in markets

Anti-Competitive Agreements

[Section 3]

An agreement of production, supply, distribution, storage of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition.

Such agreements if made shall be void.

Nine such agreements – 4 horizontal and 5 vertical

Anti-Competitive Agreements

Horizontal Agreements –

Entered into by persons in identical or similar business

Presumed to be anti competitive & void

- Agreement to fix prices
- Agreement to control production, supply, technical development etc.
- Agreement to share market, allocate geographical market, no of customers etc.
- Bid rigging or collusive bidding

Anti-Competitive Agreements

Vertical Agreements-

Entered into by persons at different stages or levels of production chain

- Tie-in arrangement
- Exclusive supply agreement
- Exclusive distribution agreement
- Refusal to deal
- Resale Price Maintenance

Not per se void unless proved anti-competitive

Anti-Competitive Agreements

Exclusions–

Nothing contained in this section shall restrict:

- Right of any person to restrain infringement or impose reasonable conditions for protecting his IPR
- Right of any person to export goods from India to the extent it relates exclusively to exports

Case Studies

Q Which Act did Competition Act, 2002 replace?

Q Suppose two banks – ICICI and HDFC – enter into an agreement to divide various areas of Mumbai amongst themselves with a promise that the other will not serve in first's territory. What is the nature and effect of such an agreement? Why?

Abuse of Dominant Position (Section 4)

- ‘Dominant Position’ means a position of strength, enjoyed by an enterprise, which enables it to operate independently of market forces or affect its competitors/consumers in its favour
- ‘Predatory pricing’ means sale at a price below the cost, with a view to reduce competition or eliminate competitors
- No enterprise or group shall abuse its dominant position

Circumstances Leading To 'Abuse of Dominant Position'

- Imposing unfair or discriminatory condition/price in purchase or sale
- limits or restricts production, technical or scientific development to the prejudice of consumers
- Practices resulting in denial of market access
- Makes contracts subject to acceptance of supplementary obligations which are otherwise unconnected
- Uses dominant position in one market to enter into another

Regulation of Combinations (Section 5 &6)

- The acquisition of one or more enterprises by a person or merger/amalgamation of two or more enterprises shall be called a combination of such enterprises if they exceed the threshold limits of either assets or turnover specified by the Act.
- No enterprise shall enter into any such combination which causes or is likely to cause an appreciable adverse effect on competition and such combination if made shall be void.

Regulation of Combinations (Section 5 &6)

- Any person or enterprise which proposes to enter into a combination (i.e. merger exceeding the specified limit) shall give a notice to the Commission disclosing the details of the proposed combination within 30 days of the approval of the proposal/ execution of the agreement.
- No combination shall come into effect unless Commission has passed orders OR 210 days have passed from the day of giving notice to Commission.

Competition Advocacy (Section 49)

- The Central Government or State Government may in formulating a policy on competition or in any other matter, make a reference to the Commission for its opinion on the possible effect of such policy on competition.
- The Commission shall, within 60 days of making such reference, give its opinion to the CG/SG.
- The opinion given by Commission is not binding on the Government.

Case Studies

Q ABC Insurance company makes it compulsory that anybody who wants to purchase life insurance from it has to buy medical insurance too. ABC Insurance company is one of the only two players available in the field of life insurance and has a dominant position. Is it a valid condition? What can be done?

Q A German company wants to acquire XYZ India Ltd. Is approval of CCI required? What if the approval is not taken?

Competition Commission of India

- Head office of Competition Commission of India ('CCI') to be at such place as decided by Central Govt. (currently New Delhi)
- CCI to be a body corporate
- Consist of a Chairperson + 2~6 members
- Whole-time members , appointed by Central Government

Competition Commission of India

- Hold office for 5 years, up to age of 65 years
- Can resign at any time by giving notice in writing, addressed to the Central Government
- Can be removed also if adjudged as insolvent, engage in paid employment, convicted of an offence involving moral turpitude, acquired prejudicial financial interest, abused his position, become physically or mentally incapable of acting as a member.

Case Studies

Q Can the members of CCI engage in any other employment/business?

Q What is the age of retirement of members of CCI?